

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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A.C. an infant, by her m/n/g JERRYANN
KELLY, J.F. by his m/n/g JERRYANN KELLY
and JERRYANN KELLY , individually

Plaintiff

-against-

ATTORNEY'S AFFIRMATION

THE CITY OF NEW YORK, DETECTIVE
DESANTIS, DEPUTY INSPECTOR ROBERT
HANSEN, SGT. ANDREW HILLERY, Sh. # 1031
DETECTIVE LAWRENCE COGNATO, Sh. # 116
DETECTIVE ANDREW FAGO, Sh. # 2171,
DETECTIVE BRENDAN O' BRIEN, Sh. # 6356
DETECTIVE JENNIFER CHILDS Sh. # 2022,
P.O. WARNER, DETECTIVE RIVAS, DETECTIVE
CENTENO, DETECTIVE FRIEDMAN, DETECTIVE
ALLCOMBE and SGT. LIPPER

10-CV-8438 DAB

Defendants

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THIS ACTION IS ASSIGNED TO JUDGE ENGELMAYER & WAS FILED VIA ECF

MICHAEL COLIHAN, the attorney of record for the plaintiffs herein, and an
attorney duly licensed to practice before all the Courts of the state of New York and this Court
does hereby affirm to be true, under the penalties of perjury, the following:

1. That all allegations are based on information and belief, the sources of said information
and belief being an examination of available Court records, investigations and conversations with
the plaintiff and other individuals.

2. I am fully familiar with all the facts and proceedings herein. I make this affirmation in support of the within application to compromise and settle this action on behalf of A.C. an infant aged 4 years and J.F., an infant aged 13 years.

3. The causes of action sought to be settled and compromised herein arose on May 20, 2010 when all the plaintiffs were at their home at 132 Kramer Street, Staten Island, NY.. Members of the New York City Police Department with a search warrant entered that residence at about 9:00pm and searched the residence and recovered controlled substances in one of the rooms. Although the mother of the infant plaintiffs was arrested and detained for about 24 hours, the two infant plaintiff saw the police only briefly before a neighbor took custody of the children and took them out of the apartment and into her own home where they were later returned to their mother. Neither of the infant plaintiffs was not arrested, charged with any crime or incarcerated. No plaintiff suffered physical injury and did not receive any medical or psychiatric treatment as a result of this incident.

4. I was retained to represent the plaintiffs in connection with this incident. The retainer agreement provided that I receive as an attorneys fee one third of the net sum recovered, whether by suit, settlement or otherwise, after reimbursement to me of disbursements or expenses.

5. The defendants have made a final offer of settlement of TWO THOUSAND FIVE HUNDRED DOLLARS to each infant plaintiff in full satisfaction of this claim. I have told my clients that it is not at all clear what a jury would do in this action, since the police were in

possession of a search warrant when the incident occurred and the infant plaintiffs were not physically injured, arrested, incarcerated or charged with any crime. In addition, the only witnesses to this occurrence other than the plaintiffs were members of the New York City Police Department and these men cannot be expected to testify favorably for my clients. Further, recent Supreme Court case law has held that a detention as brief as the one described here is not compensable when it occurs in the context of a valid search warrant.

6. I have performed the following services in connection with this matter, which included the initial interview with the clients, preparing, filing and serving a summons, complaint, civil cover sheet and Rule 7.1 statement, negotiations with the City of New York regarding settlement, and one conference with the court, when it was assigned to Judge Batts, visits to the scene of the occurrence for the purposes of investigation, and telephone calls and conferences with the client, preparation of interrogatories and document requests, Rule 26 disclosure as well as response to the discovery demands of the City, service of process upon the police defendants, and letter applications to the Court and opposing counsel regarding discovery

7. In addition, I have paid the following “out of pocket” expenses related to the prosecution of this matter which include the filing fee of this Court of \$350.00 and service of process on the defendants at \$75.00 each.

8. The retainer agreement in this matter provided that the plaintiff pay to your affirmant one third of the net sum recovered, after the deduction of the aforementioned expenses necessary to the prosecution of this action. The mother of the infant plaintiff has agreed to allow deduction

of the expenses from her share of the recovery. I would be willing to accept only the fee of \$833.33 from the recovery of each infant plaintiff and thus accept only my one third fee. I request that the recovery in this action be allotted as follows: To Michael Colihan the sum of \$833.33 from the recovery of the infant plaintiff A.C and the sum of \$833.33 from the recovery of the infant plaintiff J.F.. Each infant plaintiff would receive the sum of \$1666.66. as and for net proceeds.

9. It is respectfully requested that if the Court approves this settlement that the infant's share of the recovery be placed in an interest bearing account to be held for each infant until their respective 18th birthday.

10. Upon information and belief there are no monies due and owing for hospital or medical services to any person or institution as a result of services rendered due to this incident.

11. Neither I, nor, upon information and belief any other person, have become concerned in this application or the subject matter thereof, at the insistence of the defendants, nor have I received, nor am I to receive any compensation from the defendants, and the only monies I have or I will receive is this fee to be awarded by the Court.

12. No prior application for the relief requested has been made.

WHEREFORE, it is respectfully requested that the relief preyed for be granted, together with such other and further relief as may seem just in the premises.

_____/s/_____

MICHAEL COLIHAN